Chapter Five

Insurance in the Context of National Authorisation

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1. Introduction

The risks of launching satellites and rockets include a degree of third party liability risk. These risks can be summarised as follows:

- Pre-launch operations risks – mainly concerned with property damage and bodily injury arising out of a pre-launch accident. Although all pre-launch operations involve hazardous materials and substantial handling risks, the majority of this exposure is limited contractually by mutual hold harmless provisions so that each party involved is responsible for damage or injury to their own property and employees.

- Launch operations risks – mainly concerned with the ballistic risk of the launch vehicle and satellite during the initial launch flight and up until the insertion of the satellite into orbit. These risks are managed by range safety procedures but there is a residual degree of risk to bystanders and surrounding property in the event of a launch vehicle failure or anomaly.

- Specific in-orbit operations risks – for low earth orbiting spacecraft and launch vehicle stages, these arise out of the process of re-entry. For all spacecraft, and launch vehicle stages, the risk of collisions with other satellites is also a concern once in orbit.

The launch risk and the possibility of damage caused by the return to earth of the spent stages of the launch vehicle, was the emotive issue

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which first caused international preoccupation with space third-party liability in the context of international law. The Liability Convention,¹ the UN Convention on the subject, is part of a broad spectrum of treaties agreed in the earliest days of the ‘space race’, and is now, to some extent, less than adequate given the developments and changes brought about by the multinational commercial exploitation of space.

Historically, launch service providers have taken control of the situation by either providing a policy to cover third-party liability arising out of launch operations at the launch site on behalf of all parties involved, or by establishing a standard form of coverage which others are able to access on the open insurance market. Currently most launch services providers include or offer launch liability cover as part of the launch service.

The policy must meet the demands of the international treaties (the Outer Space Treaty² and the Liability Convention) as well as respond to any local statutory or licensing requirements and the applicable conventional liability regime at the location.

Some aspects of the Liability Convention should be noted in particular:

1. It has the status of a treaty and imposes joint and several liability on the signatory governments to other governments for damage caused by a space object for which they are the “launching State”.³ As one can imagine, this has become a key issue for multi-national programs, as the respective liability of participating countries can be difficult to determine.

¹ Convention on International Liability for Damage Caused by Space Objects (hereafter Liability Convention), London/Moscow/Washington, done 29 March 1972, entered into force 1 September 1972; 961 UNTS 187; TIAS 7762; 24 UST 2389; UKTS 1974 No. 16; Cmnd. 5068; ATS 1975 No. 5; 10 ILM 965 (1971).
³ Art. VII, Outer Space Treaty, provides: "Each State Party to the Treaty that launches or procures the launching of an object into outer space, including the moon and other celestial bodies, and each State Party from whose territory or facility an object is launched, is internationally liable for damage to another State Party to the Treaty or to